

REMARKS

Claims 1, 4-15 and 18-19 are currently pending in this application. Claims 1, 4-15 and 18-19 will remain pending on entry of the current amendments.

Amendments

The specification has been amended by introduction of a substitute "Sequence Listing." The substitute "Sequence Listing" provided herewith replaces the "Sequence Listing" submitted in the responsive filing dated August 13, 2001.

Claim 4 has been amended herein to correct the dependency of that claim. Accordingly, Applicants assert that no new matter is introduced into the specification by way of the substitute "Sequence Listing" and claim amendment.

Sequence Listing

In accordance with the provisions of 37 C.F.R. § 1.821, Applicants submit herewith a computer readable form (CRF) of the "Sequence Listing" on a 3½ inch diskette, in ASCII format as required by 37 C.F.R. § 1.821(e). Applicants also submit herewith a paper copy of the substitute "Sequence Listing" totaling three (3) pages.

The undersigned hereby states that the content of the computer readable form (CRF) of the substitute "Sequence Listing" and the paper copy of the substitute "Sequence Listing" submitted herewith are the same.

Objections

Claims 4-13 and 19 were objected to for being dependent on a rejected claim. Applicants have amended claim 4 herein to recite the appropriate dependency. Accordingly, Applicants have addressed the Examiner's objections to claims 4-13 and 19.

The amendment filed August 13, 2001 was objected to under 35 U.S.C. § 132 as allegedly introducing new matter into the specification. More specifically, it is alleged that the "Sequence Listing" submitted in the response of August 13, 2001 introduced new matter in the

form of SEQ ID NOS: 2, 10 and 11. The office action states that “SEQ ID NO:2 contains 24 of the 26 nucleotides set forth as primer KIT 35 on page 8. SEQ ID NO:2, as disclosed in the sequence listing, lacks the last two nucleotides of the sequence; however, there is no basis in the specification for a primer lacking these last two nucleotides...” *See* Office Action dated June 16, 2003, page 2, lines 16-19. The office action further states that “the sequences of SEQ ID NOS 10 and 11 were not present in the specification as originally filed.” *See* Office Action dated June 16, 2003, page 3, lines 1-2.

Applicants submit herewith a substitute “Sequence Listing” providing a corrected SEQ ID NO:2 reciting all 26 nucleotides of the sequence set forth as primer KIT 35 on page 8. Regarding SEQ ID NOS:10 and 11, Applicants respectfully direct the Examiner’s attention to Figure 3 and page 16, lines 1-5, as the source of support for SEQ ID NOS:10 and 11. SEQ ID NO:10 is the sequence identified as KIT1 in Figure 3, while SEQ ID NO:11 is the sequence identified as KIT2 in Figure 3. SEQ ID NOS:10 and 11 remain within the substitute “Sequence Listing,” and find support in Figure 3 and page 16, lines 1-5 as originally filed. Accordingly, Applicants assert that the substitute “Sequence Listing” and the remarks provided *supra* address the Examiner’s objections to the specification based on new matter.

Rejections

Rejections under 35 U.S.C. § 112, 1st paragraph

Claims 7 and 15 were rejected under 35 U.S.C. § 112, 1st paragraph as allegedly failing to comply with the written description requirements, thereby introducing new matter. More specifically, the office action states that

[t]he claims as originally filed listed the sequences set forth in claims 7 and 15, however the originally filed claims did not designate a SEQ ID NO. It is noted that while the actual sequence set forth in the claim and designated as SEQ ID NO 2 was present in the originally filed specification, SEQ ID NO 2, which lacks the last two nucleotides -GG- of the second primer, was not. Further, SEQ ID NO 2 in the sequence listing is not the same as the second primer listed in each claim. In addition, the specification as originally filed provided no basis for a primer lacking the last two nucleotides of the KIT35 primer...

See Office Action dated June 16, 2003, page 3, line 17 extending to page 4, line 1.

Applicants submit herewith a substitute "Sequence Listing" correcting the sequence of SEQ ID NO:2. Therefore, the recitation of "SEQ ID NO:2," the nucleotide sequence of SEQ ID NO:2, and the nucleotide sequence set forth in claims 7 and 15 all refer to the same nucleotide sequence. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 7 and 15 under 35 U.S.C. § 112, 1st paragraph.

Rejections under 35 U.S.C. § 112, 2nd paragraph

Claims 7 and 15 were rejected under 35 U.S.C. § 112, 2nd paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the rejection states that

[t]he claims designate SEQ ID NO 2 as the identifier for the sequence of the second primer, however SEQ ID NO 2 from the sequence listing is not the same as the sequence of the second primer. Consequently, the metes and bounds of the claim are unclear because the skilled artisan would not be able to determine whether the sequence of the second primer was the sequence listed, or SEQ ID NO 2.

See Office Action dated June 16, 2003, page 4, lines 9-13.

Applicants submit herewith a substitute "Sequence Listing" correcting the sequence of SEQ ID NO:2. Therefore, the recitation of "SEQ ID NO:2," the nucleotide sequence of SEQ ID NO:2, and the nucleotide sequence set forth in claims 7 and 15 all refer to the same nucleotide sequence. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 7 and 15 under 35 U.S.C. § 112, 2nd paragraph.

Conclusion


Applicants believe that incorporation of the amendments and consideration of the above remarks has placed this application in a condition for allowance. Early notification of a favorable consideration is respectfully requested.

Respectfully submitted,

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